



STATE OF MAINE
Department of Environmental Protection

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

August 20, 2010

Rebecca Boucher
Shems Dunkiel Raubvogel & Saunders PLLC
9 College Street
Burlington, VT 05401

And

Jane West
Conservation Law Foundation
47 Portland Street, Suite 4
Portland, ME 04101-9872

RE: Response to letters dated July 26, 2010 and July 28, 2010

Dear Ms. Boucher and Ms. West:

As you know, the processing of this application has been put on hold until September 11, 2010 at the applicant's request. However, I want to respond to your letters of July 26, 2010 and July 28, 2010. In your letters you request that the Department address information gaps relevant to the outstanding information that has been requested by the Department, comparing these requests to the information that has been submitted in the pre-filed direct and rebuttal testimonies. Furthermore, the July 28th letter requests follow-up on the issue of financial capacity.

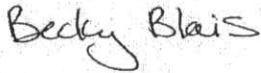
When requests for additional information are made either by the Department or any other agency responsible for reviewing applications, it is the applicant's responsibility to provide direct and timely responses to the Department regarding all requests for additional information. A direct response by an applicant to information requests is important; it helps to ensure a complete record that is clear and can be readily reviewed by Department staff and others interested in the proceeding. Therefore, until the applicant provides direct responses to agency review comments and questions, gaps in the licensing record remain.

While pre-filed testimony has been submitted in this proceeding that may address some of the information requests, it is not appropriate for the Department staff to analyze the pre-filed testimony and make a judgment at this time on whether the applicant has provided an adequate and complete response to the information requests. Such a process assumes the applicant's burden to demonstrate compliance and that determination will be made in the Department's proposed draft order after all of the evidence is received and the record is closed.

Regarding the issue of financial capacity, should the applicant locate a new source of financing by September 11, , the applicant would be required to submit the evidence of that new financing in accordance with the Site Law and Chapter 373(1). The adequacy of the financial capacity would be evaluated during the application review process. Department staff may also recommend to the Board that the project be approved without final evidence of financial capacity but that a condition be placed on the Board Order requiring that , the applicant to submit the final evidence prior to the start of construction.

Please feel free to call me at (207) 446-2564 or Peggy Bensinger at (207) 626-8578 if you have any further questions regarding this project.

Respectfully,

A handwritten signature in cursive script that reads "Becky Blais".

Becky Blais
Project Manager
Division of Land Resource Regulation
Bureau of Land & Water Quality

Cc: File